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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CHILDREN'S HEALTH DEFENSE, a Georgia non-
profit organization,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation; MARK
ZUCKERBERG, a California resident; SCIENCE
FEEDBACK, a French corporation; THE POYNTER
INSTITUTE FOR MEDIA STUDIES, INC., a
Florida corporation; and DOES 1-20.

Defendants.

Case No.: 3:20-cv-05787-SI

**DEFENDANT THE POYNTER
INSTITUTE FOR MEDIA STUDIES,
INC.'S RESPONSE IN OPPOSITION
TO PLAINTIFF'S MOTION TO
SUPPLEMENT ITS SECOND
AMENDED COMPLAINT**

DATE: MAY 5, 2021
TIME: 1:30 P.M.
COURTROOM: 1-17TH FLOOR

TABLE OF AUTHORITIES

Cases

<i>Allen v. City of Beverly Hills</i> , 911 F.2d 367 (9th Cir. 1990)	1
<i>Armstrong v. Scribner</i> , No. 06cv852 L(RBB), 2008 WL 268974 (S.D. Cal. Jan. 30, 2008)	1
<i>Beezley v. Fremont Indem. Co.</i> , 804 F.2d 530 (9th Cir. 1986)	1
<i>Gardner v. Martino</i> , 563 F.3d 981 (9th Cir. 2009)	1

1 Defendant The Poynter Institute for Media Studies, Inc.’s (“Poynter”) hereby files this
 2 Response in Opposition to Plaintiff’s Motion to Supplement its Second Amended Complaint
 3 (“Motion”) [Dkt. No. 76], filed on March 8, 2021.

4 First, none of the Plaintiff’s proposed supplemental allegations are directed toward
 5 Poynter, and thus they would have no impact on Poynter’s pending motion to dismiss. Therefore,
 6 permitting the supplement as to Poynter would be futile. *See Beezley v. Fremont Indem. Co.*, 804
 7 F.2d 530, 530-31 (9th Cir. 1986) (affirming denial of motion to supplement complaint where
 8 plaintiff failed to allege any new facts that would entitle him to relief); *Gardner v. Martino*, 563
 9 F.3d 981, 990 (9th Cir. 2009) (“When a proposed amendment would be futile, there is no need to
 10 prolong the litigation by permitting further amendment.”) (internal quotation omitted); *Allen v.*
 11 *City of Beverly Hills*, 911 F.2d 367, 373-74 (9th Cir. 1990) (“The district court’s discretion to deny
 12 leave to amend is particularly broad where plaintiff has previously amended the complaint.”);
 13 *Armstrong v. Scribner*, No. 06cv852 L(RBB), 2008 WL 268974, at *26 (S.D. Cal. Jan. 30, 2008)
 14 (“The Court may deny a motion to file supplemental pleadings when supplementation would be
 15 futile, such as where the newly-asserted claims would not survive a motion to dismiss.”).

16 Plaintiff impliedly concedes the futility of its proposed supplemental allegations as it
 17 previously told the Court in its March 10, 2021 correspondence that even allowing it to
 18 supplement its complaint would not moot the pending motions to dismiss. Thus, this Court should
 19 deny the Motion and proceed to hear the pending motions to dismiss on May 5. Finally, even if
 20 this Court were to grant the Motion, Poynter’s pending motion to dismiss should still be heard as
 21 currently scheduled as the proposed new allegations have absolutely no impact on the claims made
 22 against Poynter. Poynter need not incur additional expense and delay preparing a third motion to
 23 dismiss on a fourth version of a complaint that is for all relevant purposes the equivalent of the
 24 operative one.

25 Second, Poynter adopts and incorporates the arguments set forth in Defendants Facebook,
 26 Inc.’s and Mark Zuckerberg’s Response to the Motion [Dkt. No. 82] as if fully stated herein.
 27 Plaintiff unduly delayed in filing the Motion. It has already thrice amended the allegations in its
 28

1 complaint, and now seeks, after briefing has closed on Defendants' respective motions to dismiss,
2 to add further allegations that it knew or should have known well in advance of filing the Motion.
3 Moreover, as set forth in the Facebook/Zuckerberg opposition, the supplemental allegations
4 Plaintiff seeks to include do nothing to resuscitate its fatal claims against any of the Defendants.

5 For the foregoing reasons, Poynter respectfully requests that Plaintiff's Motion to
6 Supplement its Second Amended Complaint be denied as to Poynter, or, if granted, its Second
7 Amended Complaint should be dismissed with prejudice because the supplemental allegations fail
8 to cure the fatal defects that are the subject of the pending motions to dismiss.

9
10 Dated: March 22, 2021

JASSY VICK CAROLAN LLP

By: /s/ Kevin L. Vick

KEVIN L. VICK

THOMAS & LOCICERO PL

By: /s/ Carol Jean LoCicero

CAROL JEAN LOCICERO

*Attorneys for Defendant, The Poynter Institute
for Media Studies, Inc.*

SIGNATURE ATTESTATION

I am the ECF User whose identification and password are being used to file the foregoing.
Pursuant to Civil Local Rule 5-1(i), I hereby attest that the other signatures have concurred in this filing.

Dated: March 22, 2021

By: /s/ Kevin L. Vick
Kevin L. Vick

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2021, I electronically filed the above document with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered counsel.

Dated: March 22, 2021

By: /s/ Kevin L. Vick
Kevin L. Vick